

REMARKS/ARGUMENTS

The present application has been reviewed in light of the Office Action mailed on December 11, 2006. Claims 1-75 are currently pending, claims 1, 15, 47 and 55 having been amended herein, claim 75 having been added herein and claims 5-6, 32-46, 52-54 and 67-74 having been withdrawn from consideration. Reconsideration of the present application, as amended, is respectfully requested.

A Restriction Requirement was issued, wherein the Examiner indicated that the application contained claims directed to the following distinct inventions: (Group I) Claims 1-4, 7-31, 47-51 and 55-66, drawn to a surgical staple and wound closure material applicator, classified in class 606, subclass 219; and (Group II) Claims 5-6, 32-46, 52-54 and 67-74, drawn to tissue cauterization by electrical energy, classified in class 606, subclass 32;

On November 29, 2006, Applicant elected and hereby confirms the election of Group I for prosecution on the merits, namely, claims 1-4, 7-31, 47-51 and 55-66. Applicant's election is made without traversal.

Applicant respectfully reserves the right to file the non-elected claims, namely, claims 5-6, 32-46, 52-54 and 55-66, in various Divisional and/or Continuation applications.

Claim 55 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant has amended claim 55 in a manner that is believed to overcome the rejection under 35 U.S.C. § 112, second paragraph. Accordingly, in view of the amendments to claim 55 herein,

Applicant respectfully submits that the rejection of claim 55 under 35 U.S.C. § 112, second paragraph, has been overcome.

Claims 1-4, 7-31, and 74-51 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,897,562 to Bolanos (“Bolanos”) in view of U.S. Patent No. 6,488,197 to Whitman (“Whitman”). Applicant submits that claims 1, 15 and 47, as amended herein, are each allowable over Bolanos in view of Whitman.

Applicant submits that each of the amended claims 1, 15 and 47 is not disclosed or suggested by Bolanos in view of Whitman. Each of independent claims 1, 15 and 47 recites, *inter alia*, a surgical stapler including needles adapted “to allow the *biocompatible wound closure material to be delivered through the needles* to penetrate one or more layers of body tissue.” (Emphasis added).

As seen in FIGS. 3A and 10 of the present application, the needles 140 are configured to allow delivery of “a quantity of biocompatible wound closure material “A” *through each individual needle 140.*” (See page 7, paragraph 94) (Emphasis added). Additionally, according to the present application, in operation, “continued distal advancement of staple pusher 330 results in the expulsion of biocompatible wound closure material out through and/or about needles 350.” (See page 10, paragraph 118).

By contrast, Bolanos discloses a fastening instrument. As seen in FIGS. 5C and 5D, the staple cartridge has a tissue contacting surface 301, staple receiving slots 303 and a plurality of perforation holes 302 to permit passage of dart members 304 therethrough to precondition the tissue to be joined. (See Column 7, lines 17-30). Bolanos, however, fails to disclose or suggest

needles adapted to allow the biocompatible wound closure material to be delivered through the needles to penetrate one or more layers of body tissue, as recited in claims 1, 15 and 47.

Whitman discloses a fibrin injection mechanism for use in combination with a stapling instrument. As seen in FIGS. 5 and 6, the stapling instrument comprises, among other things, a reservoir portion 25, a blade 75, a plunger driver 110 and a driving cylinder 70. The blade 75 “has a series of channels 90 communicating with a dispensing chamber 95. The chamber 95 extends from the inner side of the blade 75 and spans the circumference of the blade.” (See column 7, lines 45-48 of Whitman). In operation, “once the plunger driver 110 has compressed the membrane 105 to its maximum stress limit, the membrane 105 breaks, the fibrin is released, and [the fibrin] passes through channels 90 in the blade 75, and is thereby transferred to the cutting and stapling site.” (See column 9, lines 6-10).

Whitman, however, does not disclose or suggest a surgical stapler having needles adapted “to allow the biocompatible wound closure material to be delivered through the needles to penetrate one or more layers of body tissue.” Accordingly, Applicant submits that providing Bolanos with the fibrin injection mechanism of Whitman does not disclose or suggest the surgical stapler including needles adapted to allow biocompatible wound closure material to be delivered through the needles to penetrate one or more layers of body tissue, as substantially called for in each of claims 1, 15 and 47.

Applicant therefore submits that, in view of the amendments made to claims 1, 15 and 47, herein, and in view of the arguments presented above, that each of claims 1, 15 and 47 is allowable over Bolanos in view of Whitman.

Since claims 2-4 and 7-14 depend, directly or indirectly, from claim 1, and contain all of the features of claim 1, for the reasons presented above regarding the patentability of claim 1, Applicant respectfully submits that claims 2-4 and 7-14 are also patentable over Bolanos in view of Whitman.

Since claims 16-31 depend, directly or indirectly, from claim 15, and contain all of the features of claim 15, for the reasons presented above regarding the patentability of claim 15, Applicant respectfully submits that claims 16-31 are also patentable over Bolanos over Whitman.

Since claims 48-51 depend, directly or indirectly, from claim 47, and contain all of the features of claim 47, for the reasons presented above regarding the patentability of claim 47, Applicant respectfully submits that claims 48-51 are also patentable over Bolanos over Whitman.

Claims 55-66 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Whitman in view of Bolanos. Applicant submits that claim 55, as amended herein, is allowable over Whitman in view of Bolanos.

Applicant submits that claim 55 is not disclosed or suggested by Whitman in view of Bolanos. Independent claim 55, as presently amended, recites a surgical stapler including, *inter alia*, a body tissue property enhancing system having “a plurality of deployable needles disposed, one each, in the annular array of needle receiving slots for delivering the body tissue enhancer *through the needles*.” (Emphasis added).

As discussed above, the needles are configured to allow delivery of “a quantity of biocompatible wound closure material “A” through each individual needle 140.” (See page 7,

paragraph 94). Additionally, in operation, “continued distal advancement of staple pusher 330 results in the expulsion of biocompatible wound closure material out through and/or about needles 350.” (See page 10, paragraph 118).

As discussed *supra* in regards to the rejection of claims 1-4, 7-31 and 47-51 under 35 U.S.C. § 103(a), Bolanos fails to disclose or suggest a surgical stapler having a body tissue property enhancing system including a plurality of deployable needles disposed, one each, in the annular array of needle receiving slots for delivering the body tissue enhancer through the needles, as recited in claim 55, and Whitman fails to disclose or suggest a surgical stapler having a body tissue property enhancing system including a plurality of deployable needles disposed, one each, in the annular array of needle receiving slots for delivering the body tissue enhancer through the needles, as recited in claim 55.

Accordingly, Applicant submits that providing Whitman with the dart members of Bolanos does not disclose or suggest a surgical stapler having a body tissue property enhancing system including a plurality of deployable needles disposed, one each, in the annular array of needle receiving slots for delivering the body tissue enhancer through the needles, as recited in claim 55.

Applicant therefore respectfully submits that, in view of the amendments made to claim 55 herein, and in view of the arguments presented above, that claim 55 is allowable over Whitman in view of Bolanos.

Since claims 56-66 depend, directly or indirectly, from claim 55, and contain all of the features of claim 55, for the reasons presented above regarding the patentability of claim 55,

Applicant respectfully submits that claims 56-66 are also patentable over Whitman in view of Bolanos.

New claim 75 has been added herein. It is respectfully submitted that the new claim 75 in the application is fully supported by the specification, introduces no new matter, and is patentable over the prior art.

Should the Examiner believe that a telephone interview may facilitate prosecution of this application, the Examiner is respectfully requested to telephone Applicant's undersigned representative at the number indicated below.

In view of the foregoing amendments and remarks, reconsideration of the application and allowance of claims 1-4, 7-31, 47-51, 55-66 and 75 is earnestly solicited.

Respectfully submitted,



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